

they wish to bring to their county,"¹⁰⁰ and indeed the record indicates that Franklin County made a good faith effort to do so.¹⁰¹ Even if it had not, however, our rules do not require the participation or support of the stations, much less commitments with respect to their future programming. As the Commission has indicated, the active opposition of a station might be a relevant consideration, at least for the county seeking the modification,¹⁰² but none of the four Atlanta Stations have opposed the Petitions. We therefore give no weight to these arguments by the Opposing Stations.

IV. CONCLUSION

30. The issue before us is whether to grant Petitioner's requests to modify the local satellite carriage markets of WSB-TV, WAGA, WXIA, and WGCL, all of which are located in the Atlanta, GA DMA, to include Georgia's Franklin County, which is currently assigned by Nielsen to the Greenville-Spartanburg-Asheville-Anderson DMA. Section 338(l) permits the Commission to add or exclude communities from a station's local television market to better reflect market realities and to promote residents' access to local programming from broadcasters located in their State.¹⁰³ Under this statutory provision, the Commission must afford particular attention to the value of localism.¹⁰⁴

31. With respect to each of the Stations, we are persuaded by the overall strength of the evidence that a sufficient market nexus exists between the Station and Franklin County. As the foregoing analysis indicates, this is a close case. In such circumstances, we believe that the outcome that best serves the intent of Congress in enacting Section 338(l) is to provide the petitioning orphan county with the access to in-state programming it is requesting.¹⁰⁵ We accordingly grant the requests for market modification, and order the addition of Franklin County to the local markets of WSB-TV, WAGA, WXIA, and WGCL on both DISH and DIRECTV.¹⁰⁶

V. ORDERING CLAUSES

32. Accordingly, **IT IS ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 18-158, CSR No. 8957-A) filed by Franklin County, Georgia with respect to WSB-TV, Atlanta, Georgia (Facility ID No. 23960), **IS GRANTED**.

33. **IT IS FURTHER ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the

¹⁰⁰ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10418, para. 14.

¹⁰¹ *See supra* note 44..

¹⁰² *STELAR Market Modification Report and Order*, 30 FCC Rcd 10406 at 10418, para. 14.

¹⁰³ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10412-13, para. 7.

¹⁰⁴ *Id.*

¹⁰⁵ *See supra* para. 18.

¹⁰⁶ We remind WSB-TV, WAGA, WXIA, and WGCL of their individual obligations to elect retransmission consent or mandatory carriage with respect to Franklin County within 30 days of the release of this item. We also remind DISH and DIRECTV of their obligation to commence carriage within 90 days of that election, unless the station(s) have elected retransmission consent and the parties have not agreed to carriage. 47 CFR § 76.66(d)(6).

Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 18-159, CSR No. 8958-A) filed by Franklin County, Georgia with respect to WAGA, Atlanta, Georgia (Facility ID No. 70689), **IS GRANTED**.

34. **IT IS FURTHER ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 18-160, CSR No. 8959-A) filed by Franklin County, Georgia with respect to WXIA, Atlanta, Georgia (Facility ID No. 51163), **IS GRANTED**.

35. **IT IS FURTHER ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 18-161, CSR No. 8960-A) filed by Franklin County, Georgia with respect to WGCL, Atlanta, Georgia (Facility ID No. 72120), **IS GRANTED**.

36. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's Rules.¹⁰⁷

FEDERAL COMMUNICATIONS
COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Media Bureau, Policy
Division

¹⁰⁷ 47 CFR § 0.283.



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November 13, 2018

Accepted / Filed

NOV 13 2018

Federal Communications Commission
Office of the Secretary

By Hand Delivery

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WYFF Hearst Television Inc., Meredith Corporation, Nexstar Broadcasting, Inc., and WLOS Licensee LLC, Joint Application for Review, MB Dkts. Nos. 18-158; 18-159; 18-160; 18-161

Dear Ms. Dortch:

On behalf of WYFF Hearst Television Inc., Meredith Corporation, Nexstar Broadcasting, Inc., and WLOS Licensee LLC, pursuant to 47 C.F.R. § 1.115, enclosed please find an original and a copy (for each of the above-referenced dockets) of a Joint Application for Review of the Media Bureau's September 17, 2018, Memorandum Opinion and Order in the four above-referenced dockets.

This Joint Application for Review was filed electronically in the above-referenced dockets on Monday, November 12th. It is being hand-delivered today because the Commission was closed yesterday in observance of the Veterans Day Holiday. Please contact me with any questions.

Sincerely,

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

Timothy G. Nelson
tnelson@brookspierce.com

Counsel to WYFF Hearst Television Inc., Meredith Corporation, Nexstar Broadcasting, Inc., and WLOS Licensee LLC

Enclosures

NOV 13 2018

Federal Communications Commission
Office of the Secretary

**Before the
Federal Communications Commission
Washington, D.C. 20544**

In the Matter of)	
	)	MB Docket 18-158
Franklin County, Georgia	)	CSR-8957-A
)	
	)	MB Docket 18-159
Petitions for Modification of the	)	CSR-8958-A
Satellite Television Markets of)	
WSB-TV, WAGA, WXIA,	)	MB Docket 18-160
and WGCL, Atlanta, GA)	CSR-8959-A
)	
)	MB Docket 18-161
)	CSR-8960-A

JOINT APPLICATION FOR REVIEW

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November 12, 2018

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Exhibit A: *Franklin County, Georgia, Petitions for Modification of the Satellite Television Markets of WSB-TV, WAGA, WXIA, and WGCL, Atlanta, Georgia, Memorandum Opinion and Order, DA 18-954 (rel. Sept. 17, 2018)*

Summary

The four Petitions filed by Franklin County, Georgia, through its Board of County Commissioners, to add Franklin County to the local television markets of four Atlanta Stations for purposes of satellite carriage are based almost exclusively on the fact that Franklin County residents do not have access to "in-state" television stations from Atlanta and some citizens of the County would prefer to view the Atlanta Stations if they do not have to pay for them.

The overwhelming objective evidence of the statutory factors presented to the Media Bureau does not support market modification: (i) the Atlanta Stations are not historically carried in Franklin County; (ii) the Atlanta Stations lack over-the-air coverage of, geographic proximity to, and a programming nexus to Franklin County; (iii) there is superior technical coverage and local programming of specific interest to Franklin County residents from the television stations located in the Greenville-Spartanburg-Asheville-Anderson DMA; and (iv) the Atlanta Stations lack any meaningful audience in Franklin County. There is, therefore, no accounting or assessment of the evidence that weighs the totality of the statutory factors in favor of market modification.

Nevertheless, the Media Bureau in its Order afforded disproportionate and effectively dispositive weight to in-state (as opposed to local Franklin County) programming from the Atlanta Stations and select citizen and public official comments expressing a desire to receive those stations. The Bureau's analysis of the evidence presented in this case renders it all-but impossible to oppose a county's market modification petition so long as the county demonstrates some modicum of community support for receipt of programming from an in-state station. Such an analysis is in error and cannot stand.

Congress added the in-state programming factor in 2014 so that it could be considered alongside—not ahead of—the four other historical factors bearing on localism. The new in-state programming factor is neither exclusive nor dispositive. To the contrary, in its 2015 STELAR Order, the Commission specifically held that “the in-state factor does not serve as a trump card negating the other four statutory factors.” This should be especially true in petitions like these where there is no evidence that the Atlanta Stations have expressed any desire to be carried in the County or an intention to provide localized programming specifically targeted to the County. In fact, because there is no evidence that the Atlanta Stations intend to authorize carriage of their full signals into Franklin County, the Bureau’s market modification Order will, as a practical matter, do nothing to further Congress’ intent to promote access to in-state programming.

The Bureau’s Order must be reversed.

**Before the
Federal Communications Commission
Washington, D.C. 20544**

In the Matter of)	
	)	MB Docket 18-158
Franklin County, Georgia	)	CSR-8957-A
)	
	)	MB Docket 18-159
Petitions for Modification of the	)	CSR-8958-A
Satellite Television Markets of)	
WSB-TV, WAGA, WXIA,	)	MB Docket 18-160
and WGCL, Atlanta, GA	)	CSR-8959-A
)	
	)	MB Docket 18-161
	)	CSR-8960-A

JOINT APPLICATION FOR REVIEW

WYFF Hearst Television Inc., licensee of NBC affiliate WYFF(TV), Greenville, South Carolina (“WYFF”); Meredith Corporation, licensee of FOX affiliate WHNS(TV), Greenville, South Carolina (“WHNS”); Nexstar Broadcasting, Inc., licensee of CBS affiliate WSPA-TV, Spartanburg, South Carolina (“WSPA”); and WLOS Licensee LLC, licensee of WLOS(TV), Asheville, North Carolina (“WLOS”) (collectively, the “In-Market Stations”), through counsel and pursuant to Rule 1.115 of the Commission’s Rules, hereby seek review by the full Commission of the Media Bureau’s (“Bureau”) decision set out in its September 17, 2018, Memorandum Opinion and Order (the “Order”)¹ granting four satellite market modification petitions filed by Franklin County, Georgia (“Petitioner” or the “County”)² that sought to add Franklin County to the local

¹ *Franklin County, Georgia, Petitions for Modification of the Satellite Television Markets of WSB-TV, WAGA, WXIA, and WGCL, Atlanta, Georgia*, Memorandum Opinion and Order, DA 18-954 (rel. Sept. 17, 2018) (“Order”) (attached as Exhibit A).

² *See Franklin County, Georgia Petition for Special Relief for Modification of the Television Market of Station WSB-TV (ABC), (Channel 2) Atlanta, Georgia with Respect to DISH Network and DIRECTV*, MB Docket 18-158; *Franklin County, Georgia Petition for Special Relief for Modification of the Television Market of Station WAGA (FOX), (Channel 5), Atlanta, Georgia with Respect to DISH Network and DIRECTV*, MB Docket 18-159; *Franklin County, Georgia*

television markets of four Atlanta television stations, WXIA, WAGA, WGCL, and WSB-TV (collectively, the “Atlanta Stations”) for purposes of satellite carriage.³

The Order is contrary to Section 102 of STELAR,⁴ its legislative history, the Commission’s STELAR Order,⁵ and Commission precedent and policy.⁶ The Commission should grant this Application for Review and reverse the Order.

I. QUESTION PRESENTED

Whether the Order erred by giving disproportionate and effectively dispositive weight to the “access to in-state programming” factor and citizen support for access to such programming, discounting the lack of objective evidence bearing on the local relationship between the Atlanta Stations and Franklin County, producing a standard the result of which is that any county-filed petition seeking market modification based on access to in-state television stations will be granted where, as here, the petitioning county’s residents say that they would like to be able to watch those stations.

II. STANDARD OF REVIEW

In considering Applications for Review, the Commission considers whether the challenged action taken pursuant to delegated authority (i) is in conflict with statute, regulation, case precedent, or established Commission policy; (ii) involves a question of law or policy that has not previously been resolved by the Commission; (iii) involves the application of a precedent or policy

Petition for Special Relief for Modification of the Television Market of Station WXIA (NBC), (Channel 11), Atlanta, Georgia with respect to DISH Network and DIRECTV, MB Docket 18-160; Franklin County, Georgia Petition for Special Relief for Modification of the Television Market of Station WGCL (CBS), (Channel 46), Atlanta, Georgia with Respect to DISH Network and DIRECTV, MB Docket 18-161 (all filed April 27, 2018, and collectively, the “Franklin County Petitions”).

³ The In-Market Stations filed a Joint Opposition to the Franklin County Petitions. *See* Joint Opposition to Petitions for Special Relief, MB Dockets 18-158 to 18-161 (filed June 7, 2018) (“Joint Opposition”).

⁴ The STELA Reauthorization Act of 2014 (STELAR), Pub. L. No. 113-200, 128 Stat. 2059, 2060-62 (2014) (“STELAR”).

⁵ *Amendment to the Commission’s Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*, Report and Order, 30 FCC Rcd 10406 (2015) (“STELAR Order”).

⁶ 47 C.F.R. § 1.115(b)(2)(i).

that should be overturned or revised; (iv) is based on an erroneous finding as to an important or material question of fact; or (v) is marked by prejudicial procedural error.⁷

III. BACKGROUND

A. The Historical Role of Localism in Market Modification Proceedings.

The market modification process exists so that the Commission may alter a television station's local television market when doing so would allow broadcasters and multichannel video programming distributors ("MVPDs") to "better serve the interests of local communities."⁸ The touchstone for evaluating a market modification request is whether there is a sufficient nexus—that is, a "local relationship"—between the television station and the relevant community.⁹ To that end, the Commission, when judging the merits of a market modification petition, "must afford particular attention to the value of localism,"¹⁰ which has long been defined as programming that "is responsive to the needs and interests of their communities of license."¹¹

Until 2014, Congress enumerated four statutory factors for the Commission to consider and weigh in evaluating the market nexus between a television station and the relevant community:

⁷ See 47 C.F.R. § 1.115(b)(2)(i)-(v). The Media Bureau had the opportunity to pass on all questions of fact and law discussed herein. 47 C.F.R. § 1.115(c).

⁸ STELAR Order, ¶ 7.

⁹ See, e.g., *CoxCom, LLC, for Modification of the Market of WMDE*, Memorandum Opinion and Order, Dover, Delaware, 30 FCC Rcd 10978 (MB 2015), ¶ 3 (quoting legislative history of Section 614 of the Communications Act, and explaining that the original four factors "are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market"); see also, e.g., *La Plata County, Colorado, Petitions for Modification of the Satellite Television Markets of KDVR-TV, KCNC-TV, KMGH-TV, and KUSA-TV, Denver, Colorado*, Memorandum Opinion and Order, 32 FCC Rcd 1474 (MB 2017), ¶ 4 (requiring a showing that a station has a local relationship to the relevant, new community).

¹⁰ Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113-322 (2014) ("Senate Commerce Committee Report"), at 10-11; see also 47 U.S.C. § 338(l)(2)(B); STELAR Order, ¶ 8.

¹¹ *Designated Market Areas: Report to Congress Pursuant to Section 109 of the STELA Reauthorization Act of 2014*, 31 FCC Rcd 5463 (MB 2016) ("2016 In-State Programming Report"), ¶ 11.

- **Historical carriage:** Whether the station, or the other stations located in the same area, have been historically carried on the cable system or systems within such community.
- **Local Service by Out-of-Market Station:** Whether the television station provides coverage or other local service to such community.
- **Local Service By In-Market Stations:** Whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the statutory requirements provides news coverage of issues of concern to such community or provides carriage of sporting and other events of interest to the community.
- **Viewing patterns:** Evidence of viewing patterns in cable and non-cable households within the areas served by the cable system(s) in such community.¹²

The Commission imposed evidentiary requirements relevant to establishing a market nexus between the station and the community for the purpose of evaluating these factors:

- Maps illustrating the relevant community locations and geographic features, mileage between the station and the community, transportation routes, and station and cable system facilities;
- Contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas;
- Available data on shopping and labor patterns in the local market;
- Television station programming information derived from station logs or local television guides;
- Cable system lineup cards or television guides demonstrating historical carriage; and
- Audience data for the relevant station for cable and non-cable households, advertising data or sales data.¹³

B. STELAR and the Addition of the "In-State" Programming Factor.

In enacting STELAR in 2014, Congress extended the market modification regime to satellite carriage. It also added a fifth statutory factor—access to "in state" television signals—to the existing four factors that the Commission must consider in its overall localism analysis.

Critically, in enacting STELAR, Congress did not state—either explicitly or implicitly—that access to in-state programming, alone, could be dispositive in any market modification

¹² See 47 U.S.C. § 534(h)(1)(c)(ii) (2014).

¹³ See 47 C.F.R. § 76.59(b)(1)–(6) (2014); see also *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Final Report and Order, 14 FCC Rcd 8366 (1999).

proceeding. Rather, Congress made clear that the new “access to in-state signals” factor is to be considered along with the other four factors. The “access to in-state signals” factor was not intended to and does not replace, subsume, or in any way change the existing four factors and their relevance, or the framework for how the Commission is to analyze them.

Consistent with Congress’s directive, the Commission launched and completed a proceeding to implement Section 102 of STELAR.¹⁴ In its resulting STELAR Order, the Commission heeded Congress’s direction to “consider the plight” of viewers living in orphan counties.¹⁵ It determined how the “access to in-state signals” statutory factor should be construed, setting forth the appropriate weight the new factor should be given, and explaining that a petitioner would be “afforded credit for satisfying this factor simply by showing that the involved station is licensed to a community within the same state as the new community.”¹⁶

The Commission, however, did not alter or adjust the then-existing, underlying test for evaluating market modification petitions. Nor did it set forth any new test relevant to “orphan” counties. Rather, the Commission specifically reaffirmed the importance of analyzing the totality of the (now five) statutory factors, including consideration of access to “in-state” signals.

First, the Commission in the STELAR Order emphasized the importance of considering *all five factors* in evaluating a market modification request, noting that the new “access to in-state signals” factor “*is not universally more important than any of the other factors[.]*”¹⁷ Most importantly, the Commission ordered that “the in-state factor *does not serve as a trump card* negating the other four statutory factors.”¹⁸

¹⁴ See generally STELAR Order.

¹⁵ See, e.g., STELAR Order, ¶¶ 3, 14-15, 28.

¹⁶ STELAR Order, ¶ 18.

¹⁷ See STELAR Order, ¶ 18 (emphasis added).

¹⁸ STELAR Order, ¶ 18 (emphasis added).

Second, the Commission maintained the existing analytical framework with respect to the other four factors, particularly the second statutory factor, “local service” provided by the station subject to market modification. The Commission explained the crucial difference between the “local service” second factor and the “access to in-state signals” factor, which became factor three for purposes of the Commission’s analysis:

[U]nder factor two, we consider whether the station has aired programming, such as news, politics, sports, weather and other emergency information, *specifically targeted to the community at issue* (e.g., town council meeting, news or weather event that occurred in the community, local emergencies, etc.). Under factor three, we would consider whether the station has aired programming, such as news, politics, sports, emergency information, *specifically related to the state in which the community is located* (e.g., coverage of state politics and legislative matters, state sports team coverage, state emergency information, etc.).¹⁹

Third, the Commission did not modify, lessen, or waive any of the other required evidentiary factors for petitions seeking to add “in-state” signals, nor did it even forecast circumstances in which a waiver might be appropriate. To the contrary, the Commission specifically required application of the four pre-STARLAR evidentiary requirements applicable to market modification for satellite carriage because “the same language is used in both the cable and satellite statutory factors and the record provides no basis for adopting a different interpretation in the satellite versus cable context.”²⁰

Finally, the Commission permitted county governments to file petitions seeking market alterations in the satellite carriage context (a distinction from the cable regime, where counties are not afforded that privilege). But, the Commission expressly recognized the difficulty that county governments might have in providing the required “specific evidence to demonstrate the five

¹⁹ STARLAR Order, ¶ 18 n.85 (emphasis added).

²⁰ STARLAR Order, ¶ 20. *See contra* Order, ¶¶ 10, 14, & n.32.

statutory factors” and “strongly encourage[d] county government petitioners to enlist the aid and cooperation of the station they wish to bring to their county” in order to “avoid dismissal” due to a lack of sufficient evidence.²¹ The Commission therefore recommended that county governments consult with the affected television station(s) before filing a petition for market modification because “without the willing participation of the affected broadcaster, modifying the market of a particular television station, in itself, would not result in consumer access to that station.”²²

C. The Evidence Presented by the Parties.

The County provided evidence of the service contours of the Atlanta Stations, which evidence does not demonstrate any meaningful technical coverage of Franklin County.²³ The County also provided evidence of the geographic distances from the transmitters of the Atlanta Stations to Carnesville, Georgia, in Franklin County. Both the County and the In-Market Stations filed an exhibit showing the relative signal strengths of the Atlanta Stations and the In-Market Stations. These exhibits show that the Atlanta Stations provide weak NLSC coverage to Carnesville, Georgia, in Franklin County, while the In-Market Stations provide strong NLSC coverage to Carnesville.

The County also provided a list of programming from the Atlanta Stations that shows general, local Atlanta news programs, but the evidence does not indicate any specific programming tailored to Franklin County. The In-Market Stations provided evidence of historical carriage in Franklin County and regular programming specifically targeted to the County, including news, weather, and political programming of interest to Franklin County viewers.

²¹ STELAR Order, ¶ 14.

²² See STELAR Order, ¶ 14.

²³ The County’s evidence discussed in this section III.C. may be found in Exhibits E-I and K of the Franklin County Petitions.

The County submitted an online survey, generated using Survey Monkey, that polled 1,769 residents from four counties in northern Georgia (including 563 from Franklin County), which Franklin County claims show the “shopping” preferences of those residents. The respondents represent less than 3% of the total residents in Franklin County.²⁴ The County’s survey fails to provide any information about sample selection or other methodology and no evidence of statistical significance.

The County submitted letters from citizens of Franklin County that express a desire to gain access the Atlanta Stations. Citizens who listed the reasons they preferred to watch the Atlanta Stations cited local news, weather, sports, and political coverage. The County submitted a letter from Georgia’s United States Senators and a member of the U.S. House of Representatives who represents Franklin County in support of the Franklin County Petitions.

The County also submitted a letter from the Georgia Association of Broadcasters (GAB). Contrary to the Bureau’s assertion that it received “supportive” comments from the GAB,²⁵ the GAB did not take a position on the merits of the Petitions; instead, GAB recognized that a delicate balance exists between seeking to increase in-state programming without disrupting Nielsen’s DMA system. To that end, the GAB stated that it “continues to support efforts to negotiate terms of targeted carriage arrangements to allow delivery of local, in-state, non-duplicative broadcast programming and to increase access to in-state news by Georgia viewers”²⁶—an outcome that generally would not require the Commission to grant a market modification petition.

²⁴ There were 22,820 residents in Franklin County as of July 2017. *See* U.S. Census Bureau, <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>.

²⁵ *See* Order, ¶ 11.

²⁶ *See* Franklin County Petitions, at Exhibit K.

The County did not present channel lineup cards or other guides demonstrating satellite or cable carriage of the Atlanta Stations in Franklin County, or evidence of viewing patterns in Franklin County. Rather, the County requested that the Bureau waive those requirements entirely.²⁷

D. The Media Bureau's Order.

The Order waives the evidentiary requirements applicable to the County regarding channel lineup cards and published audience data because the Bureau reasoned that the County had made a good faith attempt to coordinate with the Atlanta Stations in filing its petitions.²⁸ The Order finds that it is technologically and economically feasible for both DISH and DIRECTV to provide each of the Atlanta Stations to Franklin County.²⁹

With respect to the five statutory factors, the Orders first notes that, because this was an "orphan county" situation, the Bureau gave "substantial weight to the local and in-state programming a petitioner proposes to bring to the orphan counties, as well as to government official and consumer comments supporting a proposed market modification."³⁰

The Order finds that (i) statutory factors one (historical carriage) and five (viewing patterns) weigh against a modification; (ii) factor four (service from in-market stations) is "neutral"; and (iii) factors two (local service) and three (access to in-state signals) "weigh heavily" in favor of modification. The Order finds that this is a "close case" but "believes the outcome that best serves the intent of Congress in enacting Section 338(l) is to provide the petitioning orphan county the request for market modification."³¹

²⁷ See Order, ¶ 14 n.41 (citing Franklin County Petitions, at 10).

²⁸ See Order, ¶ 14.

²⁹ See Order, ¶ 15.

³⁰ See Order, ¶ 18.

³¹ See Order, ¶ 31.

With respect to factor two (local service), the Order finds (i) a lack of high quality over-the-air coverage by the Atlanta Stations; (ii) that “overall geographic proximity measures” do not enhance the County’s case; and (iii) that the County “has not demonstrated that the Stations offer a significant amount of local programming targeted to Franklin County.”³² The Order specifically notes the “increased importance” of local programming in orphan county cases, where the Bureau places less weight on geographic proximity.³³

Nevertheless, the Bureau in the Order gives increased weight to the County’s Survey Monkey results, which—despite capturing a tiny percentage of the County’s residents—purportedly show the “avid interest” of County residents in receiving the Atlanta Stations; the support from the three members of the Georgia Congressional delegation; and the “scores” of comments from local citizens in support of modification.³⁴ The Order specifically states that the citizen comments “merit substantial weight,” which the Bureau ultimately determined outweighed the lack of other evidence of local nexus between the Atlanta Stations and the County.³⁵

The Order gives the third factor (access to in-state stations) “the greatest possible weight” in favor of the requested modification.³⁶ The Order first finds that the In-Market Stations do provide coverage of in-state (i.e., Georgia) local and statewide news and sporting events, but then nevertheless finds that “it is clear from the scores of comments supporting the modification that Franklin County residents consider this coverage to be inadequate.”³⁷

³² See Order, ¶¶ 20, 24.

³³ See Order, ¶ 10 n.33.

³⁴ See Order, ¶¶ 21, 22.

³⁵ See Order, ¶ 22.

³⁶ See Order, ¶ 26.

³⁷ Order, ¶ 26.

The Order gives no weight to the practical and legal concerns raised by the In-Market Stations that the County did not provide any evidence that the Atlanta Stations (i) are authorized or willing to provide carriage of their signals in Franklin County in the event of a market modification, or (ii) would provide any local programming specifically targeted to viewers in Franklin County if their signals are ever carried there.

IV. ARGUMENT

The Bureau's Order requires very little of orphan counties seeking to modify the markets of in-state television stations. In fact, the practical result of the Order is that, as long as the subject in-state stations provide in-state programming (which always will be the case), a county need only marshal comments and survey responses from a small sample of citizens and government officials expressing a desire to view those in-state stations in order to prevail. Armed with these facts, a county need not prove that the in-state stations have been historically carried in the county, achieved measureable ratings in the county, have a geographic nexus to the county, or provide local programming tailored to the county. Nor must a county offer any evidence that the in-state stations have the right to deliver—or any interest in delivering—their full signals to the county. In other words, it makes no difference whether the market modification would actually result in carriage of the very programming citizens want.

While acknowledging that the Franklin County matter is a “close case,” the Bureau resolves it in a way that gives disproportionate—and effectively dispositive—weight to the “in-state” programming factor and the support of county residents and officials. In doing so, the Order discounts or disregards important objective evidence of localism. First, in considering factor two (local service), the Order gives disproportionate weight to comments from county residents and disregards the failure of the County to demonstrate that the Atlanta Stations actually provide local

service to the county, including relevant local programming that the Order itself deems especially important. Second, the Order gives the “greatest possible weight” to factor three (access to in-state signals), which is unwarranted because the Order acknowledges that the In-Market Stations do, in fact, provide some in-state programming. Third, in weighing all five factors, the Order places virtually dispositive emphasis on access to in-state programming, despite the absence of evidence of historical carriage, signal coverage, significant local programming, or viewing patterns that demonstrate a local relationship between the Atlanta Stations and the County.

This result contradicts the statutory text of STELAR and the Commission’s regulations implementing the law. In STELAR, Congress directed the Commission to “pay particular attention to the value of localism” in weighing all five statutory factors.³⁸ For decades, the Commission has relied in these proceedings on objective evidence of a local nexus between the community at issue and the stations seeking to be imported there. Those factors, including historical carriage of the stations, the availability of programming specifically targeted to the community, the technical coverage area of the stations, and viewing patterns, all bear on the underlying focus on localism and the question of whether the proposed modification will enhance the local relationship between the stations and the community at issue. To be sure, Congress’ addition of the “in-state” programming factor may tip the scales in favor of a modification in an orphan county case where there is also sufficient evidence of other factors establishing a local nexus. And, indeed, some of the Bureau’s recent orphan county decisions granting market modification petitions involved situations where such additional evidence was actually demonstrated by the petitioning county.³⁹

³⁸ Senate Commerce Committee Report, at 10-11.

³⁹ See, e.g., *Harrison County, Texas, Petitions for Modification of the Satellite Television Markets of KLTW, Tyler, Texas and KFXX-TV, Longview, Texas*, Memorandum Opinion and Order, DA 18-573 (MB June 1, 2018) (“Harrison County Order”) (finding evidence that: one of the in-state station’s community of license was within the county; the county was largely within

But neither Congress nor the Commission authorized the Bureau to recast the evidence or the statutory factors to create a special test for orphan counties that would elevate access to (and citizen support for) in-state programming to near-dispositive status. To the contrary, the Commission explained:

[T]hat this new factor is not universally more important than any of the other factors and its relative importance will vary depending on the circumstances in a given case. In sum, in market modification petitions involving the addition of an in-state broadcaster, the in-state factor does not serve as a trump card negating the other four statutory factors.⁴⁰

The Order's failure to properly evaluate, credit, and weigh the five statutory factors (and the evidence underlying all five factors) is compounded by the lack of evidence that the Atlanta Stations can and will authorize carriage of their signals in Franklin County. The market modification cannot achieve the result sought by the County and some of its citizens unless and until the Atlanta Stations intend to authorize carriage in Franklin County. Without such evidence, granting the Franklin County Petitions will not promote access to in-state stations or otherwise solve the "plight" of orphan county viewers wanting to receive in-state stations.

Stated simply, the practical result of the Order's analytical framework is, first, to turn access to in-state programming into the very "trump card" that the Commission said it could not

the service contours of the in-state stations; there was some evidence of historical carriage on cable systems within the county; and the stations provided locally-targeted programming to the county's residents); *Monongalia County, West Virginia and Preston County, West Virginia, Petitions for Modification of the Satellite Markets for WDTV, Weston, West Virginia, and WBOY-TV and WVFX, Clarksburg, West Virginia*, Memorandum Opinion and Order, DA 18-113 (MB Feb. 7, 2018) ("West Virginia Order") (finding that the in-state stations were historically carried in the counties, provided complete over-the-air coverage of and county-specific programming to the counties (including "extensive coverage" of West Virginia University, located in Monongalia County), and are geographically closer to the counties than the counties are to Pittsburgh).

⁴⁰ STELAR Order, ¶ 18. The Commission also found that, "[u]ltimately, each petition for market modification will turn on the unique facts of the case." *Id.*

be, and, second, to create the expectation that Franklin County's citizens will get Atlanta programming, when, in reality, there is no certainty that will happen. The Order should be reversed.

A. The Order Disregards or Discounts Evidence of Local Service, Giving Disproportionate Weight to Citizen and Government Official Comments.

The second factor (local service) requires the Commission to consider "whether the *television station* provides coverage or other local service to such community."⁴¹ By its plain terms, this factor focuses on the local service that the "television station"—here, the Atlanta Stations—actually provides to Franklin County. The traditionally required evidence of proximity, signal coverage, and local programming is integral to establishing that a television station provides sufficient coverage or local service to the community at issue.⁴² Without basis, the Order asserts that geographic proximity tests have less significance in orphan county cases.⁴³ At the same time that the Order assigns less significance to geographic proximity, it elevates local programming relevant to the community, stating it has "increased importance" in orphan county cases:

Because geographic proximity tests have less significance in orphan county cases than in other market modification cases, programming information has increased importance in consideration of factor two, and it is essential in determining how much weight to give to factor three. We therefore strongly encourage and expect petitions seeking addition of an orphan county, whether they are broadcasters or the counties themselves, to provide information about specific programming, sports, events, and news stories relevant to the community at issue that have been broadcast by the station(s) at issue, and, if relevant, also demonstrate that such programming is not regularly broadcast by any station currently serving the county.⁴⁴

⁴¹ 47 U.S.C. § 338(l)(2)(B)(ii) (emphasis added.)

⁴² See, e.g., *Calif.-Oregon Broadcasting, Inc. d/b/a Crestview Cable Communications*, Memorandum Opinion and Order, 29 FCC Rcd 3833 (MB 2014), ¶ 16.

⁴³ In fact, in other proceedings orphan counties have successfully demonstrated evidence of geographic nexus through signal coverage and geographic proximity. See, e.g., *West Virginia Order*, ¶¶ 21-23; *Harrison County Order*, ¶¶ 22-24.

⁴⁴ Order, ¶ 10 n.33.

Here, the Order correctly finds that: (i) the County failed to demonstrate that the Atlanta Stations have a high-quality, over-the-air signal that covers Franklin County; (ii) “overall geographic proximity measures do not enhance the County’s case”; and (iii) the County “has not demonstrated that the Atlanta Stations offer a significant amount of local programming targeted to Franklin County.”⁴⁵

But the Order discounts this lack of evidence and instead gives undue weight to the subjective comments of citizens and government officials, characterizing these comments as “enormously helpful” and states that they “merit substantial weight.”⁴⁶ The heightened emphasis afforded citizen and official comments is not supported by STELAR, Commission precedent, or the Order’s own focus on local programming under factor two.

As a *procedural* matter, neither Congress nor the Commission has suggested that such comments should be given additional weight in orphan county cases. At most, the Commission suggested that “local government and consumer comments in a market modification proceeding *can help* demonstrate a station’s nexus to the community at issue.”⁴⁷ But the Order does much more than turn to such comments for “help.” Rather, the Order affords such significant weight to those comments that they override the County’s failure to demonstrate significant local programming, over-the-air coverage, and geographic proximity of the Atlanta Stations.

As a *substantive* matter, while the interest of local citizens in receiving Atlanta Stations may be “helpful” to the Commission, it cannot override the statutory focus on evidence of local service (or lack thereof) provided by the Atlanta Stations themselves. This is especially true where, as here, the County fails to produce sufficient evidence of local programming provided by the

⁴⁵ Order, ¶¶ 20-24.

⁴⁶ Order, ¶ 22.

⁴⁷ STELAR Order, ¶ 14, n.61 (emphasis added).

Atlanta Stations—evidence that the Order deems would have “increased importance” to show “specific programming, sports, events, and news stories relevant to the community at issue.”⁴⁸ By elevating the subjective wishes of some citizens to receive certain programming over the lack of objective evidence of whether the Atlanta Stations actually provide such programming, the Order turns the local service factor on its head. Under the Order’s analysis, any county would be able to satisfy the “local service” factor by simply including letters from selected citizens and public officials—with nothing more.

As a *statutory* matter, the citizen comments themselves focus more on a desire to receive programming relating to Georgia rather than Franklin County specifically. The Commission clearly distinguishes programming of *local* interest, relevant to statutory factor two, and programming of *statewide* interest, relevant to statutory factor three.⁴⁹ In that regard, the comments seeking access to programming relating to Atlanta and Georgia generally should be deemed much less “helpful” in considering local nexus under the second factor. To the extent some citizens express interest in receiving more *local* programming, the Order’s twin findings that (i) the In-Market Stations do provide some local programming⁵⁰ and (ii) the Atlanta Stations do not provide a significant amount of local programming,⁵¹ should have led the Bureau to afford *less* weight, not more, to the value of the citizen comments and survey results.⁵²

In sum, the Order’s dispositive reliance on citizen and government official desire to watch an “in-state” station makes it all but impossible for stations to successfully oppose such a

⁴⁸ Order, ¶ 10 n.33.

⁴⁹ STELAR Order, ¶ 18, n.85.

⁵⁰ See Order, ¶¶ 26-27.

⁵¹ See Order, ¶¶ 23-24.

⁵² Finally, the Order wrongly credits the survey responses as evidence of “shopping and labor patterns.” The unreliable survey, which polled less than 3 percent of all county residents, shows that almost half of them shop or receive services “locally” as opposed to in Atlanta.

modification petition—after all, what citizens would reasonably object to receiving extra stations from their home state? The Order’s narrowing of the local service factor in this regard contradicts the statutory text and undermines the importance of local programming tailored to the county at issue.

B. The Order Improperly Gives the “Greatest Possible Weight” to the Third Factor (Access to In-State Stations).

The third factor—access to in-state programming—may be afforded different categories of weight depending on the circumstances. If the station that would be imported is located in the same state as the county, then the factor weighs in favor of modification.⁵³ If the county shows that the station provides in-state programming as a general matter, then the factor is afforded “greater” weight.⁵⁴ And, the factor may be given “even more” weight if county residents have little (or no) access to such in-state programming without market modification.⁵⁵

The Order errs in finding that this third factor should be given the “greatest possible weight” in favor of modification. Such “greatest possible” weight is only appropriate in situations where county residents have little or no access to such in-state programming. That is not the case here. The Order itself plainly acknowledges that the In-Market Stations “demonstrate that they provide some coverage of in-state news and sporting events.”⁵⁶ The Order nevertheless states that “it is clear from the scores of comments supporting the modification that Franklin County residents consider this coverage to be *inadequate*.”⁵⁷ It was improper for the Bureau to graft this additional

⁵³ STELAR, ¶18.

⁵⁴ STELAR, ¶18.

⁵⁵ STELAR, ¶18.

⁵⁶ See Order, ¶ 26.

⁵⁷ See Order, ¶ 26 (emphasis added.)

layer of “adequacy” in considering whether the In-Market Stations provide “little (or no) access to such in-state programming.”⁵⁸

The evidence submitted by the In-Market Stations includes political and election coverage, weather, traffic, crime, and general interest stories relating to Georgia, and to Franklin County in particular.⁵⁹ The citizen comments do not contradict the fact that the In-Market Stations provide “some coverage of in-state news and sporting events.”⁶⁰ This finding, on its face, precludes giving the in-state programming factor the “greatest weight.”

Further, the Order ignores the reality that citizen complaints about lack of access to certain Georgia-focused sports programming—including coverage of the Atlanta United Major League Soccer team, University of Georgia sports, and the Atlanta Falcons—are not supported by the facts. Except in limited circumstances, Franklin County residents are able to watch Georgia sports teams on the In-Market Stations. For example, there is no evidence that Atlanta United games are only available on the Atlanta Stations. Instead, most of the team’s games are available on FOX or a FOX cable channel; broadcast of the games is not dependent on the viewer’s residence. With respect to Georgia Bulldogs football, there should not be a circumstance in which a Georgia football game is available on the Atlanta Stations but not on the In-Market Stations.⁶¹ It is true

⁵⁸ Order, ¶ 25; *see also* U.S. Const. amend. I.

⁵⁹ *See* Joint Opposition, Exhibits A-D.

⁶⁰ Order, ¶¶ 26-27.

⁶¹ According to national college football schedules, *see* <https://fbschedules.com/>), there was no Saturday in 2016 or 2017 where a Georgia game would have been carried on the Atlanta Stations but not the In-Market Stations. Georgia played all of its games on either CBS, the SEC Network, or on an ESPN channel. Clemson (a South Carolina school) played all of its games on either ABC or an ESPN channel (and one game on Raycom on a day Georgia played on the SEC Network). The County complains that the In-Market Stations’ news coverage leading up to the 2018 National College Football Playoff focused more on Clemson than Georgia, but the In-Market Stations’ evidence includes a declaration that the Dabo Swinney Show (head coach of Clemson) actually is highly viewed in northern Georgia counties; further, Clemson, South Carolina, is approximately the same geographic distance from Franklin County as Athens, Georgia.

that there are some Sundays where the In-Market Stations broadcast a Carolina Panthers game instead of a Falcons game, but those conflicts occurred on only 4 of 17 Sundays during 2017.⁶²

Thus, this third factor cannot be entitled to the “greatest possible” weight, as the Order recognizes that the In-Market Stations provide some in-state programming of interest to Franklin County residents. Most importantly, regardless how much weight this factor is afforded in an orphan county context, it is not universally more important than any of the other factors, and it does not serve as a “trump card” negating the four other factors. Yet, as described below, by affording this factor the “greatest possible weight” and combining it with the citizen support for in-state programming, the Bureau allowed this factor to, in fact, “trump” the (lack of) all of the other objective evidence of localism that did not support modification.

C. The Order Impermissibly Gives Near-Dispositive Weight to In-State Programming and Citizen Comments in Analyzing the Evidence.

The Order declares the case to be “close.” But its analysis proves otherwise—and that the mere possibility of availability of in-state programming from the Atlanta Stations, coupled with the desire of some Franklin County residents to receive such programming, is sufficient to support a modification, despite the fact that the greater weight of virtually all of the other objective factors indicates the lack of any local relationship between the County and the Atlanta Stations.

The overwhelming weight of the evidence regarding the other four factors weighs against modification, including the lack of historical carriage (first factor), the lack of signal coverage, localized programming, and geographic proximity (second factor), and the lack of audience ratings (fifth factor). The fourth factor—availability of local programming of In-Market Stations—is “neutral” under the Commission’s decisions, as the availability of such programming has not

⁶² See Joint Opposition, at 22-23.

historically been weighed “against” a modification.⁶³ Nevertheless, the Order ultimately discounts all this evidence, effectively making access to in-state programming and consumer support for such programming per se dispositive factors.

This result contradicts the Commission’s plain directive that, even in an orphan county context, where the in-state programming factor is afforded greater weight, that factor is not “universally more important” than any of the other factors.⁶⁴ The Order errs in subordinating the lack of evidence of geographic proximity, local service and local programming, historical carriage, and viewing patterns in orphan counties—especially given that other orphan counties have successfully demonstrated such evidence.⁶⁵ Further, the availability of some local programming targeted to the County by the In-Market Stations should at least be afforded some counterweight in the overall weighing of the five factors (even if it is not dispositive of factor four).

The Order therefore errs by reaching a result in which a county need only seek carriage of an in-state station and then secure a few select self-interested comments from citizens and government officials expressing a desire to receive those television signals. That result cannot be squared with the Commission’s own requirement that all five factors be considered and weighed in totality, the fact that the in-state programming factor cannot supersede the other factors, and the lack of evidence of a sufficient local relationship or nexus between the County and the Atlanta Stations to warrant a market modification.

⁶³ See Order, ¶ 27.

⁶⁴ STELAR Order, ¶ 18.

⁶⁵ See *generally* Harrison County Order; West Virginia Order.

D. The Order Fails to Appropriately Weigh the Lack of Support or Cooperation of the Atlanta Stations as a Factor Against Modification.

The undue weight the Order gives to in-state programming and citizen comments is even more problematic given the Order's refusal to assign any weight to the County's failure to demonstrate that the Atlanta Stations have (i) the right to import their network and syndicated programming into the County, and (ii) an interest in doing so. The Commission recognizes that:

[n]o statute or Commission rule requires a broadcaster to allow its signal to be carried on a local cable system because another party wishes to view it. Instead, broadcasters are given a choice whether to demand carriage under must carry, to negotiate carriage under the retransmission consent provisions, or not to be carried on a particular cable system at all.⁶⁶

The desire of Franklin County and its citizens to receive in-state stations is of little practical value without evidence of any buy-in from those stations themselves, and it could be altogether pointless if the stations have no interest in being carried in the County or otherwise lack the authority to make their full signals available. Without the Atlanta Stations' interest or authorization, the Order, practically speaking, will not serve Congress's goal of promoting access to in-state programming or otherwise fixing the "plight" of orphan county viewers seeking access to such programming.⁶⁷ Indeed, the possibility of such an "empty" market modification order is unique to orphan county petitioners.

The Commission recognized that "station carriage relies in part on business decisions involving broadcasters and satellite carriers and that without the willing participation of the affected broadcaster, modifying the market of a particular television station, in itself, would not result in

⁶⁶ See *Wiegand v. Post Newsweek Pacifica Cable, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 16099 (CSB 2001), ¶ 10.

⁶⁷ See 47 U.S.C. 538 (1)(2)(B)(III); STELAR Order, ¶¶ 1, 2, 18; Senate Commerce Committee Report, at 11. By contrast, where television stations file petitions, it is reasonable to assume that they have the authority and interest in being carried in the local community.

consumer access to that station.”⁶⁸ As a result, the Commission “strongly encourage[s] county government petitioners to enlist the aid and cooperation of the station they wish to bring to their county.”⁶⁹ Failing to do so may result in a dismissal for lack of required evidence. Worse, failing to do so can amount to an exercise in futility, as the grant of a market modification petition with no reasonable expectation of carriage in the county wastes the resources of all parties involved and raises more questions than answers.

Here, the Atlanta Stations have not in any way suggested that they support the County’s market modification request, and there is no evidence that they cooperated with the County in preparing the Petitions and producing evidence. More importantly, there is no evidence that the Atlanta Stations have the authority or desire to secure carriage of their full signal—including network and syndicated programming—in the County, or that they intend to increase coverage of issues specific to Franklin County.

The Order cites the fact that the County made a good faith effort to reach the Atlanta Stations and that only one station responded.⁷⁰ That station responded by saying it did *not* have rights to deliver network programming into Franklin County but would be willing to discuss an arrangement for delivery of local-only programming.⁷¹ And, contrary to what the Order describes, the Georgia Association of Broadcasters was not specifically “supportive” of a market modification. Rather, the GAB supported a more narrow result—the carriage of local, non-duplicative programming—which should not require a market modification.

⁶⁸ STELAR Order, ¶ 14.

⁶⁹ STELAR Order, ¶ 14 (“Moreover, to the extent the involved station opposes carriage in the county, a county government may not want to go through the time and expense of filing a petition to expand such station’s market to include its county.”).

⁷⁰ See Order, ¶ 29.

⁷¹ See Order, ¶ 14 n.44 (citing letter to which station response is attached).

The Order gives no weight to this absence of support from the Atlanta Stations or the absence of evidence that those Stations could and would provide carriage of their signals into the County.⁷² Instead, the Bureau states that "our rules do not require the participation or support of the stations, much less commitments with respect to their future programming."⁷³ But the lack of a station's participation, support, or knowledge of programming is squarely relevant to the underlying purposes of a modification proceeding and the principles of localism that a modification is supposed to foster. Indeed, without at least some evidence that the Atlanta Stations would permit carriage of their signals, a market modification will not "address the plight" of orphan county viewers by promoting access to in-state stations in the manner contemplated by STELAR.

As the Franklin County Petitions are based largely on comments from citizens who would like to gain access to the Atlanta Stations, the actual ability and interest of the Atlanta Stations to provide such programming is especially relevant to whether access to in-state stations is even achievable as a practical, legal, or economic matter. If the Atlanta Stations have no authority or interest in providing carriage in the County, it matters little how much the citizens may want to view the Stations.⁷⁴ While the County has standing to seek a modification as a general matter, it is unreasonable for the Commission to ignore the lack of support of the Atlanta Stations or the

⁷² Order, ¶ 29. Obtaining affected stations' affirmative participation (or at least tacit support) is also important in order to avoid placing those stations in a potential predicament with respect to their network and syndication contracts. Although stations can, and do, offer to provide their local news and public affairs programming to out-of-market communities, they do not control the rights to network and syndicated programming. Even where stations may have the right to authorize carriage of their entire signal in a modified market, stations still must come to business terms with the satellite carriers in order for the carriers to retransmit their signals.

⁷³ Order, ¶ 29.

⁷⁴ See *Wiegand*, 16 FCC Rcd at 16103, ¶ 10.

ability or interest of such Stations to make their signals available in evaluating the County's request.

The Order states that the "active opposition of a station might be a relevant consideration" in an orphan county context.⁷⁵ But there is little practical difference between "active opposition" and the complete lack of any support where, as here, a county reaches out to the involved stations, the stations either do not respond or state that they cannot provide carriage of its signal, and there is no evidence that the stations cooperated with the county to secure the required evidence. In either case, granting a modification petition delivers no practical relief to the County.

To avoid repetition of this kind of proceeding, the Commission should reverse the Order's grant of the Franklin County Petitions and should do so, among other reasons, because the County failed to provide evidence of the Atlanta Stations' cooperation or participation in a manner that would promote access to in-state station local programming of interest to Franklin County.⁷⁶

E. The Order Errs in Waiving Certain Evidentiary Requirements.

The Order also improperly excused the County's failure to meet the evidentiary requirements necessary to demonstrate a market nexus between the Atlanta Stations and the County that bear upon the application of the statutory factors. It did so despite the fact that the Commission in the STELAR Order specifically reaffirmed and imposed upon market modifications filed by counties in an orphan county context its longstanding required evidentiary standards.⁷⁷ Given that the STELAR Order specifically addresses orphan counties and the in-state

⁷⁵ Order, ¶ 29.

⁷⁶ See, e.g., STELAR Order, ¶ 46 (concluding that satellite carrier technical and economic feasibility is a threshold issue when a county government seeks a market modification).

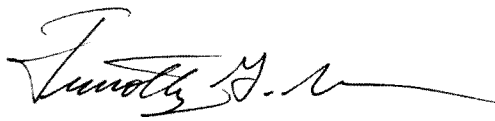
⁷⁷ STELAR Order, ¶¶ 20, 22; 47 C.F.R. § 76.59(c).

programming factor, the fact that the Commission did not even contemplate changes to the evidentiary standard reflects the importance of complying with those standards.

V. CONCLUSION

The Bureau's self-fulfilling Order would create a precedent under which virtually any orphan county that wants a market modified to include an in-state station will see its petition granted so long as the county has simply garnered the "support" of a very limited number of its citizens and a handful of its public officials. This result is improper under STELAR, the Commission's STELAR Order, and Commission policy and precedent. For these reasons and those stated above, this Application for Review should be granted and the Media Bureau's Order should be reversed.

Respectfully submitted,



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November 12, 2018

Certificate of Service

The undersigned does hereby certify that I caused a copy of the foregoing **Joint Application for Review** to be placed in the U.S. Mail, first-class postage prepaid, addressed as follows:

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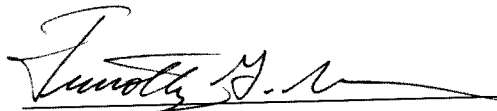
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This the 12th day of November, 2018



Timothy G. Nelson
BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, L.L.P.

Exhibit A

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Franklin County, Georgia

Petitions for Modification of the Satellite
Television Markets of WSB-TV, WAGA,
WXIA and WGCL, Atlanta, Georgia

)
)
) MB Docket No. 18-158
) CSR No. 8957-A

)
) MB Docket No. 18-159
) CSR No. 8958-A

)
) MB Docket No. 18-160
) CSR No. 8959-A

)
) MB Docket No. 18-161
) CSR No. 8960-A

MEMORANDUM OPINION AND ORDER

Adopted: September 17, 2018

Released: September 17, 2018

By the Senior Deputy Chief, Media Bureau, Policy Division

I. INTRODUCTION

1. Franklin County, Georgia (Petitioner or the County), with the support of its residents, has filed four market modification petitions to make four Georgia television stations (collectively, the Stations or the Atlanta Stations) available to satellite subscribers in the County. For historical and geographic reasons, residents in the County generally receive only South Carolina and North Carolina television stations, limiting their access to Georgia-specific news, sports, weather, and politics. With this Memorandum Opinion and Order (Order), the Media Bureau grants all four Petitions in full.

2. Petitioner filed the above-captioned Petitions seeking to modify the local satellite carriage television markets of the Stations to include Franklin County, currently assigned to the Greenville-Spartanburg-Asheville-Anderson Designated

Market Area (DMA).¹ The Stations, all of which are located in the Atlanta, Georgia DMA, are: WSB-TV (ABC) (Facility ID No. 23960), Atlanta, Georgia, WAGA (FOX) (Facility ID No. 70689), Atlanta, Georgia, WXIA (NBC) (Facility ID No. 51163), Atlanta, Georgia, and WGCL (CBS) (Facility ID No. 72120), Atlanta, Georgia.² Prior to filing the Petitions, Franklin reached out to both DBS carriers.³ In response to Franklin, DISH Network LLC (DISH) and DIRECTV, LLC (DIRECTV) filed Certifications regarding the technical and economic feasibility of the proposed modifications.⁴ DIRECTV states that its spot beams cover all current zip codes in Franklin County and DISH states that it is unaware of any factors, at this time, that would render carriage of the stations technically infeasible.⁵ Neither carrier opposed the Petitions. A Joint Opposition was filed against all four Petitions by local network affiliates in North and South Carolina (collectively, the Opposing Stations).⁶ Each Petition has been reviewed on its individual merits. However, because the Petitions were filed simultaneously and are effectively identical, and because the Stations are identically situated with respect to the feasibility of their carriage into the County, we have consolidated our decisions into this single Order for the sake of administrative efficiency.

II. BACKGROUND

3. Section 338 of the Communications Act authorizes satellite carriage of local broadcast stations into their local markets, which is called "local-into-local"

¹ See *Franklin County, Georgia Petition for Special Relief for Modification of the Television Market of Station WSB-TV (ABC), (Channel 2) Atlanta, Georgia with Respect to DISH Network and DIRECTV*, MB Docket 18-158 (filed April 27, 2018) (*WSB-TV Petition*); *Franklin County, Georgia Petition for Special Relief for Modification of the Television Market of Station WAGA (FOX), (Channel 5), Atlanta, Georgia with Respect to DISH Network and DIRECTV*, MB Docket 18-159 (filed April 27, 2018) (*WAGA Petition*); *Franklin County, Georgia Petition for Special Relief for Modification of the Television Market of Station WXIA (NBC), (Channel 11), Atlanta, Georgia with respect to DISH Network and DIRECTV*, MB Docket 18-160 (filed April 27, 2018) (*WXIA Petition*); *Franklin County, Georgia Petition for Special Relief for Modification of the Television Market of Station WGCL (CBS), (Channel 46), Atlanta, Georgia with Respect to DISH Network and DIRECTV*, MB Docket 18-161 (filed April 27, 2018) (*WGCL Petition*) (collectively, the *Petitions*). The Media Bureau placed the Petitions on public notice and sought comment. *Special Relief and Show Cause Petitions*, Public Notice, Report No. 0468 (MB May 18, 2018) (*Public Notice*).

² *Petitions* at 1, 5.

³ *Id.* at Exhibits A and B.

⁴ *Id.* at Exhibit A (*DISH Network L.L.C. STELAR Feasibility Certification, Market Modification Pre-Filing Coordination Letter for Franklin County, Georgia* (dated Sept. 2, 2016) (*DISH Certification*)); *Petitions* at Exhibit B (*Letter from DIRECTV to Beth Thomas, Franklin County Manager* (dated Aug. 2, 2016) (*DIRECTV Certification*)).

⁵ *Id.*

⁶ Joint Opposition to Petitions for Special Relief, MB Dockets 18-158, 18-159, 18-160, 18-161 (filed June 7, 2018) (*Joint Opposition*). The Opposing Stations are: WYFF Hearst Television Inc., licensee of NBC affiliate WYFF(TV), Greenville, South Carolina (WYFF); Meredith Corporation, licensee of FOX affiliate WHNS(TV), Greenville, South Carolina (WHNS); Nexstar Broadcasting, Inc., licensee of CBS affiliate WSPA-TV, Spartanburg, South Carolina (WSPA); and WLOS Licensee LLC, licensee of ABC affiliate WLOS(TV), Asheville, North Carolina (WLOS).

service.⁷ A satellite carrier provides “local-into-local” service when it retransmits a local television signal back into the local market of that television station for reception by subscribers.⁸ Generally, a television station’s “local market” is defined by the Designated Market Area (DMA) in which it is located, as determined by the Nielsen Company (Nielsen).⁹ DMAs describe each television market in terms of a group of counties and are defined by Nielsen based on measured viewing patterns.¹⁰

4. The STELA Reauthorization Act of 2014 (STELAR) added satellite television carriage to the Commission’s market modification authority, which previously applied only to cable television carriage.¹¹ Market modification, which long has existed in the cable context, provides a means for the Commission to modify the local television market of a commercial television broadcast station and thereby avoid rigid adherence to DMAs. Specifically, to better reflect market realities, STELAR permits the Commission to add communities to, or delete communities from, a station’s local television market for purposes of satellite carriage, following a written request. In the Commission’s 2015 *STELAR Market Modification Report and Order*, the Commission adopted satellite television market modification rules that provide a process for broadcasters, satellite carriers, and county governments to request changes to the boundaries of a particular commercial broadcast television station’s local television market to include a new community located in a neighboring local market.¹² The rules enable a broadcast television station to be carried by a satellite carrier in such a new community if the station is shown to have a local relationship to that community.

⁷ 47 U.S.C. § 338(a)(1).

⁸ 47 CFR § 76.66(a)(6). Pursuant to Section 338, satellite carriers are not required to carry local broadcast television stations; however, if a satellite carrier chooses to carry a local station in a particular DMA in reliance on the local statutory copyright license, it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage. See 17 U.S.C. § 122. Satellite carriers have a statutory copyright license under the 1999 Satellite Home Viewer Improvement Act (SHVIA) for carriage of stations to any subscriber within a station’s local market (Satellite Home Viewers Improvement Act of 1999 (SHVIA), Pub. L. No. 106-113, 113 Stat. 1501 (1999)). See also 47 U.S.C. § 338(a)(1); 47 CFR § 76.66(b)(1). This is commonly referred to as the “carry one, carry all” requirement.

⁹ See 17 U.S.C. § 122(j)(2); 47 CFR § 76.66(e) (defining a television broadcast station’s local market for purposes of satellite carriage as the DMA in which the station is located).

¹⁰ The Nielsen Company delineates television markets by assigning each U.S. county (except for certain counties in Alaska) to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, Nielsen includes both over-the-air and multichannel video programming distributor (MVPD) viewing.

¹¹ The STELA Reauthorization Act of 2014, § 102, Pub. L. No. 113-200, 128 Stat. 2059, 2060-62 (2014) (STELAR) (adding 47 U.S.C. § 338(l)). “STELAR” refers to the Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175.

¹² *Amendment to the Commission’s Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*; MB Docket No. 15-71, Report and Order, 30 FCC Rcd 10406 (2015) (*STELAR Market Modification Report and Order*) (revising 47 CFR § 76.59). A community is defined as a county for purposes of the satellite market modification rules. 47 CFR § 76.5(gg)(2).

5. By extending the market modification process to satellite television, Congress sought to address the so-called "orphan county" problem. An orphan county is a county that, as a result of the structure of the local television markets, is served exclusively, or almost exclusively, by television stations coming from a neighboring state.¹³ Satellite television subscribers residing in an orphan county often are not able to access their home state's news, politics, sports, emergency information, and other television programming. Providing the Commission with a means to address this problem by altering the structure of, and therefore the stations located within, a local market was a primary factor in Congress' decision to extend market modification authority to the satellite context.¹⁴

6. Section 338(l) of the Act, added by the STELAR, creates a satellite market modification regime very similar to that already in place for cable television, while adding provisions to address the unique nature of satellite television service, particularly issues of technical and economic feasibility that are specific to satellite operations.¹⁵ The STELAR carves out an exception to carriage obligations¹⁶ resulting from a market modification that would be technically or economically infeasible for a satellite carrier to implement. The statute provides that a market modification "shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination."¹⁷ In enacting this provision, Congress recognized that the unique nature of satellite television service may make a particular market modification difficult for a satellite carrier to effectuate using its satellites in operation at the time of the determination and thus exempted the carrier from the resulting

¹³ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10408, para. 3.

¹⁴ See generally Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113-322 (2014) (*Senate Commerce Committee Report*).

¹⁵ See 47 U.S.C. §§ 338(l), 534(h)(1)(C) (providing factors the Commission must take into account when considering satellite market modification requests). The Commission may determine that particular communities are part of more than one television market. 47 U.S.C. § 338(l)(2)(A). When the Commission modifies a station's market to add a community for purposes of carriage rights, the station is considered local and is covered by the local statutory copyright license and may assert mandatory carriage (or pursue retransmission consent) with the applicable satellite carrier in the local market. Conversely, if the Commission modifies a station's market to delete a community, the station is considered "distant" and loses its right to assert mandatory carriage (or retransmission consent) on the applicable satellite carrier in the local market.

¹⁶ See *supra* note 8 (describing the "carry one, carry all" satellite carriage requirement).

¹⁷ 47 U.S.C. § 338(l)(3)(A).

carriage obligation under those circumstances.¹⁸ This exception applies only in the satellite context.¹⁹

7. In the *STELAR Market Modification Report and Order*, the Commission concluded that the satellite carrier has the burden to demonstrate that the carriage resulting from a market modification is infeasible.²⁰ The Commission requires different demonstrations of infeasibility depending on whether the claim of infeasibility is based on insufficient spot beam coverage or some other basis.²¹ Satellite carriers use spot beams to offer local broadcast stations to targeted geographic areas.²² With respect to claims of "spot beam coverage infeasibility," the Commission concluded that "it is *per se* not technically and economically feasible for a satellite carrier to provide a station to a new community that is, or to the extent to which it is, outside the relevant spot beam on which that station is currently carried."²³ With respect to other possible bases for a carrier to assert that carriage would be technically or economically infeasible, such as costs associated with changes to customer satellite dishes to accommodate reception

¹⁸ *Senate Commerce Committee Report* at 11 (recognizing "that there are technical and operational differences that may make a particular television market modification difficult for a satellite carrier to effectuate.").

¹⁹ In the cable context, if review of the factors and other evidence demonstrates that a community is part of a station's market, the modification is granted without reference to issues of technical and economic feasibility. As explained in the *STELAR Market Modification Report and Order*, Congress recognized "the inherent difference between cable and satellite television service" by adopting certain "provisions specific to satellite," including 47 U.S.C. § 338(l)(3)(A)'s feasibility exception. 30 FCC Rcd at 10408, n.6.

²⁰ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10435, para. 38 (observing that, as a practical matter, only the satellite carriers have the specific information necessary to determine if the carriage contemplated in a market modification would not be technically and economically feasible by means of their satellites in operation).

²¹ *Id.* at 10435-6, 10438, paras. 39, 42.

²² *Id.* at 10430, n.162 (quoting DIRECTV to explain that "[s]pot-beam technology divides up a portion of the bandwidth available to a satellite into beams that cover limited geographic areas" and that "[d]oing so allows particular sets of frequencies to be reused many times. This spectral efficiency unlocked the potential for satellite carriers to offer local broadcast signals in the late 1990s, and it enables satellite carriers to offer local service today.") This is in contrast to a "CONUS" beam, which provides coverage to the entire continental United States and generally carries signals that are available and accessed by subscribers throughout that entire area).

²³ *Id.* at 10429-30, para. 30. This is because the only available options to implement the market modification would be: (1) to put the signal on the satellite provider's CONUS beam (using spectrum that could otherwise be deployed for signals available to subscribers throughout the entire continental U.S.); (2) to reorient existing spot beams (which are already oriented to most efficiently serve the largest number of subscribers); or (3) to carry the same signal on an additional spot beam (using twice as much overall spectrum for the channel at issue as for other channels, which are carried on a single spot beam whenever possible). The Commission found each of these options infeasible. *Id.* at 10431-32, para. 32. The Commission allows satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed and specialized certification, under penalty of perjury. *Id.* at 10435-36, para. 39.

from different orbital locations, the Commission determined that it will review infeasibility claims on a case-by-case basis.²⁴

8. Once the threshold issue of technical and economic feasibility is resolved, Section 338(l) provides that the Commission must afford particular attention to the value of localism in ruling on requests for market modification by taking into account the following five factors:

- (1) whether the station, or other stations located in the same area—(a) have been historically carried on the cable system or systems within such community; and (b) have been historically carried on the satellite carrier or carriers serving such community;
- (2) whether the television station provides coverage or other local service to such community;
- (3) whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence;
- (4) whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and
- (5) evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.²⁵

The five statutory factors are not intended to be exclusive. Each factor is valuable in assessing whether a particular community should be included in or excluded from a station's local market. The importance of particular factors will vary depending on the circumstances of each case. The Commission may also consider other relevant information.²⁶

9. Significantly, in the STELAR, Congress added the new statutory factor three quoted above, requiring consideration of access to television stations that are located in the same state as the community considered for modification.²⁷ This

²⁴ *Id.* at 10438, para. 42. To demonstrate such infeasibility, the Commission requires carriers to provide detailed technical and/or economic information to substantiate its claim of infeasibility. *Id.*; see also *id.* at 10434-35, para. 36 (requiring satellite carriers to demonstrate infeasibility for reasons other than insufficient spot beam coverage "through the submission of evidence specifically demonstrating the technical or economic reason that carriage is infeasible").

²⁵ 47 U.S.C. § 338(l)(2)(B)(i)-(v).

²⁶ Section 338(h)(1)(C)(ii) of the Act directs the Commission to "afford particular attention to the value of localism by taking into account *such factors as*" those described above (emphasis added). 47 U.S.C. § 338(h)(1)(C)(ii). The Commission must also consider other relevant information, however, when necessary to develop a result that will "better effectuate the purposes" of the law. See 47 U.S.C. § 338(l)(1); *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, CS Docket No. 95-178, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366, 8389, para. 53 (1999) (*Cable Market Modification Second Report and Order*).

²⁷ See 47 U.S.C. §§ 338(l)(2)(B)(iii), 534(h)(1)(C)(ii)(III).

new factor and the legislative history reflect Congress's intent to promote consumer access to in-state and other relevant television programming. Indeed, the legislative history expresses Congress's concern that "many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances," may "lack access to local television programming that is relevant to their everyday lives" and indicates Congress's intent that the Commission "consider the plight of these consumers when judging the merits of a [market modification] petition ..., even if granting such modification would pose an economic challenge to various local television broadcast stations."²⁸

10. In the *STELAR Market Modification Report and Order*, the Commission determined that a satellite market modification petition must include specific evidence describing the station's relationship to the community at issue. This standardized evidence approach was based on the existing approach for cable market modifications.²⁹ Accordingly, the rules require that the following evidence be submitted:

- (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend or satellite carrier local receive facility locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market;
- (2) Noise-limited service contour maps delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas;
- (3) Available data on shopping and labor patterns in the local market;
- (4) Television station programming information derived from station logs or the local edition of the television guide;
- (5) Cable system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings;
- (6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience information, such as station advertising and sales data or viewer contribution records; and
- (7) If applicable, a statement that the station is licensed to a community within the same state as the relevant community.³⁰

Petitions for special relief to modify satellite television markets that do not include the above evidence may be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee.³¹ The Bureau may waive the requirement to submit certain evidence for good cause shown, particularly if it is in a position to

²⁸ *Senate Commerce Committee Report* at 11.

²⁹ *See STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421-22, para. 20.

³⁰ 47 CFR § 76.59(b)(1)-(7).

³¹ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10424, para. 22.

resolve the petition without such evidence.³² Parties may submit whatever additional evidence they deem appropriate and relevant.³³

11. In the instant proceeding, the County filed four Petitions seeking modification of the local television markets of Atlanta Stations WSB-TV, WXIA, WAGA, and WGCL to include Franklin County, Georgia. During the pre-filing coordination process, the satellite carriers each filed Feasibility Certifications. The *DISH Certification* states that its current satellites and spot beam configurations render carriage technically feasible, but asserts that carriage may become economically infeasible due to additional costs associated with retransmission consent fees.³⁴ The *DIRECTV Certification* says that HD and SD service to all zip codes in the County is currently feasible.³⁵ The Commission received supportive comments from Georgia's United States Senators, Johnny Isakson and David Perdue, Congressman Doug Collins of Georgia's Ninth District, representing Franklin, as well as J. Thomas Bridges, Chairman of the Franklin County Board of Commissioners, and the Georgia Association of Broadcasters.³⁶ We also received numerous resident comments in support of the Petitions.³⁷ A single Joint Opposition was filed in all four dockets by the Opposing Stations.³⁸

12. The Commission must make two determinations with respect to each of the Petitions: (1) whether the carriage of a station resulting from a proposed market modification is technically and economically feasible for each of the satellite carriers; and (2) if so, whether the petition demonstrates that a modification to the station's television market is warranted, based on the five

³² *Tobacco Valley Communications*, 31 FCC Rcd 8972, 8976 n.22 (MB 2016); 47 CFR § 1.3.

³³ *Id.* We note that although not required by Section 76.59(b), detailed information about programming is extremely important in the orphan county context. Because geographic proximity tests have less significance in orphan county cases than in other market modification cases, programming information has increased importance in consideration of factor two, and it is essential in determining how much weight to give to factor three. We therefore strongly encourage and expect petitioners seeking addition of an orphan county, whether they are broadcasters or the counties themselves, to provide information about specific programming, sports, events, and news stories relevant to the community at issue that have been broadcast by the station(s) at issue, and, if relevant, also demonstrate that such programming is not regularly broadcast by any station currently serving the county.

³⁴ *DISH Certification* at 1-2.

³⁵ *DIRECTV Certification* at 2-5 ("Form of Certification Regarding Spot Beam Coverage" for WSB-TV, WXIA, WAGA and WGCL).

³⁶ See Letter from Senators Johnny Isakson and David Perdue and Congressman Doug Collins to Ajit Pai, Chairman, FCC (May 19, 2017) (*Petitions* at Exhibit K); Letter from Congressman Doug Collins to Ajit Pai, Chairman, FCC (June 7, 2018) (FCC's Electronic Comment Filing System ("*ECFS*") in MB Dockets 18-158, 18-159, 18-160 and 18-161) (<https://www.fcc.gov/ecfs/>); Letter from J. Thomas Bridges, Chairman of the Franklin County Board of Commissioners to Ajit Pai, Chairman, FCC (June 12, 2017) (*Petitions* at Exhibit K); Letter from J. Thomas Bridges, Chairman of the Franklin County Board of Commissioners to Ajit Pai, Chairman, FCC (June 18, 2018) (FCC's *ECFS* in MB Dockets 18-158, 18-159, 18-160 and 18-161); and Letter from Bob Houghton, President, Georgia Association of Broadcasters to Ajit Pai, Chairman, FCC (November 27, 2017) (*Petitions* at Exhibit K).

³⁷ *Petitions* at Exhibits L and FCC's *ECFS* in MB Dockets 18-158, 18-159, 18-160 and 18-161.

³⁸ See *Joint Opposition*.

statutory factors and any other relevant information.³⁹

III. DISCUSSION

13. For the reasons set forth below, we find that it is feasible for both DISH and DIRECTV to carry WSB-TV, WXIA, WAGA and WGCL throughout the County. We further conclude that the evidence weighs in favor of expanding the markets for each of the Stations to include the County. We therefore modify the markets of the Stations to include Franklin County, Georgia.

14. As an initial matter, we waive certain of the evidentiary requirements of Section 76.59(b)⁴⁰ pursuant to the County's request.⁴¹ Specifically, we grant Petitioner's request to waive the requirement to file MVPD channel line-up cards and published audience data.⁴² The Commission has encouraged county petitioners to seek cooperation from stations they are seeking to bring to their county,⁴³ and the record indicates that Franklin County made a good faith effort to do so.⁴⁴ We find good cause to waive the requirement for these submissions because Petitioner made an effort to work with stations to collect them, and because we have ample evidence to render our decision without them. However, to minimize the danger of a dismissal due to insufficient evidence, we strongly encourage future Petitioners to closely coordinate with the stations at issue in order to provide a full and complete record.⁴⁵

A. Technical and Economic Feasibility

15. We find that it is technically and economically feasible for both DISH and DIRECTV to provide each of the Stations to the entirety of the County. In their Feasibility Certifications, both satellite providers indicate that there is no "spot

³⁹ 47 U.S.C. § 338(l); *see also* 47 CFR § 76.59.

⁴⁰ 47 CFR § 76.59(b).

⁴¹ *Petitions* at 10; *see also supra* note 32 and accompanying text.

⁴² *Id.*; 47 CFR §§ 76.59(b)(5) and (6). As discussed above, this evidence was not necessary in order to render a decision on the *Petitions*. The County asks for a waiver of cable system channel line-up cards and other exhibits establishing historic carriage and specifically states with regard to satellite carriage that "[t]here has not been historic carriage of the Station[s] in the County by satellite carriers, and therefore no evidence is being submitted for this element with respect to satellite." *Petitions* at 10. Regarding published audience data for the Stations for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records, the County states that "given the lack of historical carriage of the station[s] in the County, Nielsen rating[s] or other audience data would not be helpful in evaluating [these] *Petition[s]*." *Id.*

⁴³ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10418, para. 14.

⁴⁴ The licensee of Opposing Station WHNS(TV) also holds the license of Atlanta Station WGCL and states that it is not aware of any communication from Franklin County "to request its position or intentions with respect to the *Petitions*." *Id.* at 8. Franklin, however, provides evidence of emails sent to all four Stations, including WGCL, and notes that only one (WXIA) responded. Letter from Beth Thomas, Franklin County Manager to Ajit Pai, Chairman, FCC (June 18, 2018) (https://ecfsapi.fcc.gov/file/106182737823211/Letter_Response%20to%20Opposition%20Re%20Consultation%20of%20Atlanta%20Stations_06.18.18.pdf).

⁴⁵ *STELAR Market Modification Report and Order*, 30 FCC Rcd 10406 at 10418, para. 14.

beam infeasibility," and that relevant spot beam(s) cover all of the County. DIRECTV states that delivery of the signal to all of the current zip codes in Franklin County in both SD and HD is feasible.⁴⁶ DISH states that, at this time, it is unaware of any factors that would make carriage of the Stations technically infeasible; however, it asserts that it "reserves the right to amend this Feasibility Certification at any time due to, among other things, a satellite equipment failure or a different satellite being brought into service for the area that includes the County which has different coverage capabilities than the satellite(s) currently being used."⁴⁷ DISH has not amended its certification. However, DISH contends that if any of the Stations elects retransmission consent and it is unable to reach an agreement with a given Station, then it would not be possible to provide that Station's signal into the County. DISH then asserts that, in such circumstances, it "may be either technically or economically infeasible, or both, for DISH to launch a customer offering with only the remaining stations that did grant retransmission consent."⁴⁸ We clarify that the results of private retransmission consent negotiations play no part in the Commission's technical and economic feasibility analysis and are not a proper basis for infeasibility. Therefore, we disregard DISH's arguments on this issue.⁴⁹

16. The Opposing Stations challenge the Feasibility Certifications submitted by DIRECTV and DISH because they are "nearly two years old."⁵⁰ As a result, the Opposing Stations argue that, particularly with regard to DISH which reserved the right to amend its response, the Petitions should be denied or, alternatively, should be required to be supplemented with new certifications from both DISH and DIRECTV.⁵¹ The Opposing Stations cite no authority for their argument, and we find it unavailing.

B. Orphan County Status

17. Franklin is an "orphan county" with insufficient access to in-state programming. The County is assigned to the Greenville-Spartanburg-Asheville-Anderson DMA, which includes four Georgia counties, 14 counties in North Carolina, and 10 South Carolina counties.⁵² The Petitioner asserts that Franklin County residents who subscribe to satellite television service have been deprived of the ability to receive preferred in-state Georgia television broadcast stations and instead are relegated to local broadcast content oriented to North and South Carolina.⁵³ The Petitioner argues that residents of the County are currently underserved by the broadcast stations in the current DMA because they are

⁴⁶ *DIRECTV Certification* at 1-5.

⁴⁷ *DISH Certification* at 1.

⁴⁸ *Id.*

⁴⁹ We note that a satellite carrier may not carry a station with which it has not reached retransmission consent, unless that station has expressly elected mandatory carriage.

⁵⁰ *Joint Opposition* at 11. (noting that the *DISH Certification* was filed Sept. 2, 2016 and the *DIRECTV Certification* was filed Aug. 2, 2016).

⁵¹ *Id.* at 11-12. We note that parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished to the Commission. See 47 CFR § 76.6(a)(6).

⁵² See <http://krgspec.com/MarketSearch.aspx?DMAID=191>.

⁵³ *Petitions* at 1, 5.

deprived of in-state news, politics, sports, and weather.⁵⁴ This claim is supported by comments from County residents and their representatives.⁵⁵

18. With the STELAR's revisions to the market modification process, and its addition of a satellite market modification process, Congress expressly intended to address orphan county situations like that of Franklin County.⁵⁶ Indeed, the legislative history observes that "many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances," may "lack access to local television programming that is relevant to their everyday lives" and instructs us to "consider the plight of these consumers when judging the merits of a [market modification] petition ..., even if granting such modification would pose an economic challenge to various local television broadcast stations."⁵⁷ As we observed in the *STELAR Market Modification Report and Order*, "each petition for market modification will turn on the unique facts of the case," and there is no single universal way to weight the statutory factors.⁵⁸ In order to best effectuate the goals of the STELAR, we place a strong emphasis on Congress' concern about orphan county situations in analyzing the factors in this case. We therefore will give substantial weight to the local and in-state programming a petitioner proposes to bring to the orphan counties, as well as to government official and consumer comments supporting a proposed market modification.⁵⁹ In this case, grant of the market modification request would bring much desired in-state programming to Franklin County and the request is supported by many comments from government officials and local residents.

C. Market Modification Analysis⁶⁰

19. *Historic Carriage.* The first factor we must consider is "whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; or have been historically carried on the satellite carrier or carriers serving such community."⁶¹ Petitioner offers no evidence with respect to historic MVPD carriage other than to concede that there has been no historic satellite carriage,⁶² but argues that "a lack of historical carriage...should [not] weigh against" the Petitions.⁶³ The Opposing Stations assert that this factor should weigh against the requested market modification because the Atlanta Stations have not been historically carried in the

⁵⁴ *Id.* at 11.

⁵⁵ See *supra* notes 36 and 37 and accompanying text.

⁵⁶ The "core purpose of this [market modification] provision of the STELAR [is] to promote consumer access to in-state and other relevant programming." *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10415, para. 12. See also *supra* para. 5.

⁵⁷ *Senate Commerce Committee Report* at 11.

⁵⁸ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421, para. 18.

⁵⁹ *Id.* at 10417, n.61.

⁶⁰ Because the Petitions are substantively identical, the Stations are identically situated with respect to carriage into Franklin County, and the Joint Opposition does not distinguish among the Stations in its arguments, we consider them collectively in our analysis below.

⁶¹ 47 U.S.C. § 338(l)(2)(B)(i).

⁶² *Petitions* at 11.

⁶³ *Id.* at 8.

County and the North and South Carolina in-market local affiliates have been carried on the cable and satellite systems in Franklin County for many years.⁶⁴ The carriage of the Opposing Stations is not relevant to our analysis, but given the undisputed statement that the Atlanta Stations have no history of carriage in Franklin County, we agree that this factor should weigh against the proposed market modification.

20. *Local Service*. Second, we consider "whether the television station provides coverage or other local service to the community."⁶⁵ Such "local service" can include, for example, the presence of a high quality over-the-air signal; shopping and labor connections between the local community and the station's community of license; support of the local community by the station; and programming, including news or sports coverage, specifically about or addressing the community. The Petitioner does not demonstrate the presence of high quality over-the-air signals for the Stations and overall geographic proximity measures do not enhance the County's case.⁶⁶

21. However, the County supports its Petition with evidence concerning local shopping and labor patterns. Specifically, it states that "[b]ased on a survey of Northeast Georgia Orphan County residents, including Franklin County, over 91% of respondents stated that they shop locally or within the state of Georgia."⁶⁷ Additionally, the Petitioner submits that "[o]ver 97% of respondents seek services such as healthcare and arts/entertainment locally or within the state of Georgia."⁶⁸ The survey also asked respondents "Would you be interested in receiving in-state television broadcast (Atlanta stations)?" and 94.7% said "Yes." The survey also asked: "What is the main reason you are interested in switching to in-state television broadcasts?" and the results were Sports (2.00%), News (14.70%),

⁶⁴ *Joint Opposition* at 14-15 and Exhibits A through D.

⁶⁵ 47 U.S.C. § 338(l)(2)(B)(ii). To show that a station provides coverage or other local service to communities at issue in a market modification petition, parties must provide "noise-limited service contour maps ... delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas." 47 CFR § 76.59(b)(2). A station's broadcast of programming specifically targeted to the community at issue may also serve as evidence of local service. *See, e.g., Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (CSB 1999) (*Jones Cable*). Additional examples of ways to demonstrate local service beyond coverage and programming are noted above.

⁶⁶ In this regard, the Petitioner submits Exhibit E (entitled "Distance from Transmitters to Franklin County, Ga") and Exhibit F (Contour Maps for the Stations). Regarding the Petitioner's Exhibit E, the Opposing Stations assert that "[t]he statement made in each Petition about the 'distance' of the 'signal strength' is misleading at best." *Joint Opposition* at n.41. We agree that the way the Petitioner presented Exhibit E was confusing and did not demonstrate technical service or signal strength of the Stations as it may have intended. Petitioner's Exhibit F containing contour maps of the Stations also does not demonstrate strong over-the-air coverage. The Opposing Stations argue that they cover all or most of Franklin County with a good quality signal. *Joint Opposition* at 15, Exhibit E. We note, however, that the availability of other over-the-air station signals is not relevant to our consideration of this factor.

⁶⁷ *Petitions* at 9, Exhibit G.

⁶⁸ *Id.* In response to seeking healthcare and other services, the results were Local (46.00%), Georgia (51.20%), and South Carolina (2.80%).

Politics (1.90%), and All of the Above (81.40%).⁶⁹ The Opposing Stations argue that the Petitioner has not demonstrated a sufficient nexus between the Atlanta Stations and Franklin County regarding shopping patterns and that the survey shows that the largest percentage of respondents do their shopping locally.⁷⁰ Further, the Opposing Stations assert that the survey lacks any scientific validity because it "fails to provide any information about sample selection or other methodology and no evidence of statistical significance."⁷¹ Overall, the Opposing Stations contend that the evidence does not demonstrate that a substantial number of citizens commute to Atlanta for work or rely on Atlanta for shopping and other services that might demonstrate a geographic nexus to Franklin County.⁷² While not dispositive, we find that the survey does support the Petitions, particularly the avid interest of Franklin County residents in receiving the Atlanta Stations.

22. In determining the extent of local service provided by the Stations, we also consider the support for the modifications from local residents and their official representatives. As the *STELAR Market Modification Report and Order* made clear, such comments are enormously helpful in demonstrating a nexus between the stations and the local community.⁷³ In this case, scores of supportive

⁶⁹ *Id.*

⁷⁰ *Joint Opposition* at 16.

⁷¹ *Id.*

⁷² *Id.*

⁷³ 30 FCC Rcd at 10417, n.61 ("[L]ocal government and consumer comments in a market modification proceeding can help demonstrate a station's nexus to the community at issue.").

comments urged a grant of this orphan county market modification request, and we find that these comments merit substantial weight under this factor.⁷⁴

23. With regard to local programming, the Petitioner submits multi-day programming lineups for the Stations for both DISH and DIRECTV and asserts that the Stations broadcast "local news programs[s] with Georgia news, sports, and weather several times a day."⁷⁵ However, as the Opposing Stations note, the Petitions appear to rely on "Atlanta programming of 'Georgia' news" to demonstrate local service.⁷⁶ In response to the Joint Opposition, Petitioner filed an Exhibit listing twelve Franklin-specific news stories carried by the Atlanta Stations over a six-month period.⁷⁷ Although we take note of this evidence, we do not find this level of coverage to constitute compelling evidence that the Stations provide regular programming specifically about or addressing Franklin County.

24. As discussed above, evidence related to geographic proximity is not determinative in the consideration of a market modification request involving an

⁷⁴ Supportive comments were received from Members of Congress as well as from local officials and the Georgia Association of Broadcasters. See *supra* para. 11 and note 36. See also generally consumer comments filed electronically in the FCC's ECFS in MB Dockets 18-158, 18-159, 18-160, and 18-161 and the Petitions at Exhibit L. See, e.g., Bruce and Judy Scranton Comments ("The citizens of Franklin County overwhelmingly desire the opportunity to become a meaningful audience for the Atlanta Stations."); Sylvia Bellamy Comments ("This is my request that Franklin County be allowed to choose to be placed in the Atlanta television market."); Jean Owens Comments ("I am a frustrated Franklin County Citizen because [I] am forced to watch Carolina news and weather everyday when I prefer to watch the Atlanta Channels."); John and Jan Bertrang ("Receiving the Atlanta channels would help us be more informed voters"); Eric Burks, Genie Burks, Keith Burks, Tangie Burks, Nick Burks, Kelsie Burks Mays, Kacey Mays Comments ("We would like to have Atlanta stations."); Charles Fletcher and Mary Belding-Fletcher ("[P]lease make a strong consideration for allowing us into the Atlanta market."); Hugh Caudell Comments ("I am a heart patient, and travel to Emory in Atlanta. Traffic and weather updates are very beneficial to us during frequent trips.") ("We are Georgia Citizens and need Atlanta television channels"); Vickie Goss Comments ("We are interested in the reports of traffic and happenings in DeKalb and Gwinnett as we still have family there. Also, my sister in law and brother in law drive daily to work at their jobs. So please offer the Atlanta channels to Franklin County even if there is a price involved."); Lisa Bryant Comments ("I shop in Commerce and the Atlanta area. Our doctors are in Gainesville. We go to sporting events and entertaining events in Atlanta. We also vote in Georgia and prefer to see campaign ads strictly for our candidates and not candidates of our neighboring states."); Charles Martin Comments ("We desperately need Atlanta stations on DirecTV."); Judy Clay Comments ("They don't even give us the local high school sports."); Sara Freeman Comments ("Back in the 70's when the technology was not there for most of the people in the county to watch Atlanta stations they rolled with it and was glad to receive what they could.... Please allow us the choice of what we want to receive..").

⁷⁵ Petitions at 9-10; Exhibits H and I.

⁷⁶ Joint Opposition at 17. The Opposing Stations assert that Congress never intended for programming of statewide interest to be a proxy for localized programming specifically targeted to the local community; and, there was no intention for evidence of statewide programming, by itself, to be sufficient to satisfy the second factor. *Id.* at 18.

⁷⁷ Atlanta Coverage of Franklin County News, MB Dockets 18-159, 18-160, and 18-161 (filed June 18, 2018). This Exhibit was not filed in Docket 18-158, apparently due to an oversight. Since we do not find it compelling, we do not need to determine whether it would be prejudicial to consider it in that docket.

orphan county, and we generally expect to look more to evidence of community support or relevant programming than to evidence of proximity in orphan county cases.⁷⁸ In the instant case, the Petitioner has not demonstrated that the Stations offer a significant amount of local programming targeted to Franklin County, but it has offered compelling evidence of community support for access to the Stations as well as evidence of shopping and labor links between Franklin County and Atlanta. Based on the overall evidence, we find that, on balance, the second statutory factor weighs in favor of the requested modification.

25. *Access to In-State Stations.* The third factor we consider is “whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.”⁷⁹ This factor is satisfied by introduction of an in-state station to a community, but weighs more heavily in favor of modification if the petitioner shows that the involved station provides programming specifically related to subscribers’ state of residence, and may be given even more weight if subscribers in the new community have little (or no) access to such in-state programming.⁸⁰ The Petitioner states that Franklin County residents “feel disenfranchised and disadvantaged by the lack of access to Atlanta programming, and want to receive news, as well as educational, sports, and other programming from [their] own state capitol.”⁸¹ The County also asserts that its Petitions are timely because 2018 is a gubernatorial election year.⁸² According to the Petitioner, “[i]n this, and every election year, Franklin County residents do not have access to specific public affairs programming such as televised debates of gubernatorial candidates, Congressional candidates, candidates for State office, or statewide ballot issues, which compromises their ability to be well informed and well educated as to issues affecting them as citizens of Georgia.”⁸³

26. Petitioner also asserts that sports fans in the County have had insufficient opportunities to enjoy their home state Atlanta Falcons and the inaugural season of the Atlanta United Major League Soccer team, as well as University of Georgia collegiate sporting events.⁸⁴ Petitioner further notes the importance of in-state weather reports and that “the County is at a disadvantage

⁷⁸ See *supra* para. 18.

⁷⁹ 47 U.S.C. § 338(l)(2)(B)(iii).

⁸⁰ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

⁸¹ *Petitions* at 5 and Exhibit L.

⁸² *Id.* at 6.

⁸³ *Id.*

⁸⁴ *Id.* at 1, 12-13. The Petitioner asserts that in the past year, Georgia’s sports teams filled national headlines. The County notes that while the inaugural season of the Atlanta United Major League Soccer team broke multiple records for attendance, due to the lack of sports coverage in Franklin County, participation in youth soccer programs decreased while there was a 37% average increase in participation in the rest of the State. Regarding professional football, the Petitioner contends that “our residents are forced to watch the Carolina Panthers over their in-state team, Atlanta Falcons.” In addition, the Petitioner asserts that the University of Georgia (UGA) is a short 35 mile ride from the County seat and some of the County’s high school students attend a dual enrollment program there (“Move on When Ready”), yet during UGA’s path to the National Championship game, the local broadcasts were filled with Clemson news and sports updates. *Id.* at 12-13.

for seeing the incoming weather from the other portions of [the] state.”⁸⁵ In addition, with regard to in-state programming, Petitioner asserts, citing multichannel lineup cards for DISH and DIRECTV, that the Atlanta Stations broadcast “local news program[s] with Georgia news, sports, and weather several times a day.”⁸⁶ The Opposing Stations do not refute the Petitioner’s assertion, but they argue that they already provide sufficient coverage of local news and issues of interest to Franklin County and that factor three should therefore be given no additional weight.⁸⁷ Although the Opposing Stations demonstrate that they provide some coverage of in-state news and sporting events, it is clear from the scores of comments supporting the modification that Franklin County residents consider this coverage to be inadequate.⁸⁸ Based on the record before us, we therefore give this third statutory factor the greatest possible weight in favor of the requested modification.

27. Other Local Stations. Fourth, we consider “whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”⁸⁹ In general, the Commission has interpreted this factor as enhancing a station’s market modification petition if other stations do not sufficiently serve the communities at issue; however, other stations’ service to the communities rarely has counted against a petition.⁹⁰ The Petitioner states that it is “unaware of another in-state local broadcast station that is carried by a satellite provider in the County that offers Atlanta- and Georgia-oriented news coverage of issues of concern to residents of the County.”⁹¹ This is a misreading of factor 4, however, which is not concerned with the “in-state” location or focus of the existing eligible stations. Instead, under this factor we look only for the presence of locally-relevant content in the news and events coverage of the existing in-market stations. The Opposing Stations provide evidence of at least some “news coverage of issues of concern” to Franklin County, and carriage or

⁸⁵ *Id.* at 1-2.

⁸⁶ *Id.* at 9-10, Exhibits H and I.

⁸⁷ *Joint Opposition* at 21.

⁸⁸ *See supra* notes 37 and 75.

⁸⁹ 47 U.S.C. § 338(l)(2)(B)(iv).

⁹⁰ *See, e.g., Petition for Modification of Dayton, OH Designated Mkt. Area with Regard to Television Station WHIO-TV, Dayton, OH, Memorandum Opinion and Order*, 28 FCC Rcd 16011, 16019, para. 22 (MB 2013); *Petition of Tennessee Broad. Partners for Modification of the Television Market for WBBJ-TV/DT, Jackson, Tennessee, Memorandum Opinion and Order*, 23 FCC Rcd 3928, 3947, para. 49 (MB 2008).

⁹¹ *Petitions* at 7-8. In a later-filed Exhibit, Petitioner also appears to dispute the depth, breadth, and relevance of some of the news stories cited by the Joint Opposition, but it does not succeed in showing that the Opposing Stations provide no or a *de minimis* amount of coverage. Opposing Parties Highlighted News Stories, MB Dockets 18-159, 18-160, and 18-161 (filed June 18, 2018). This Exhibit was not filed in Docket 18-158, apparently due to an oversight. Since we do not find it compelling, we do not need to determine whether it would be prejudicial to consider it in that docket.